

books of the national bank as a recovery, and the dividend should then be declared in the amount of the full book value (equivalent to the actual current value) of the property being distributed.

§ 5.67 Fractional shares.

To avoid complicated recordkeeping in connection with fractional shares, a national bank issuing additional stock by stock dividend, upon consolidation or merger, or otherwise, may adopt arrangements such as the following to preclude the issuance of fractional shares. The bank may:

(a) Issue scripts or warrants for trading;

(b) Make reasonable arrangements to provide those to whom fractional shares would otherwise be issued an opportunity to realize at a fair price upon the fraction not being issued through its sale, or the purchase of the additional fraction required for a full share, if there is an established and active market in the national bank's stock;

(c) Remit the cash equivalent of the fraction not being issued to those to whom fractional shares would otherwise be issued. The cash equivalent is based on the market value of the stock, if there is an established and active market in the national bank's stock. In the absence of such a market, the cash equivalent is based on a reliable and disinterested determination as to the fair market value of the stock if such stock is available; or

(d) Sell full shares representing all the fractions at public auction, or to the highest bidder after having solicited and received sealed bids from at least three licensed stock brokers. The national bank shall distribute the proceeds of the sale *pro rata* to shareholders who otherwise would be entitled to the fractional shares.

Subpart F—Federal Branches and Agencies

§ 5.70 Federal branches and agencies.

(a) *Authority.* 12 U.S.C. 93a and 3101 *et seq.*

(b) *Scope.* This subpart describes the filing requirements for corporate activities and transactions involving Federal branches and agencies of for-

eign banks. Substantive rules and policies for specific applications are contained in 12 CFR part 28.

(c) *Definitions.* For purposes of this subpart:

(1) *Change the status of an office* means conversion of a:

(i) State branch or state agency operated by a foreign bank, or a commercial lending company controlled by a foreign bank, into a Federal branch, limited Federal branch, or Federal agency;

(ii) Federal agency to a Federal branch or limited Federal branch;

(iii) Federal branch to a limited Federal branch or Federal agency; or

(iv) Limited Federal branch to a Federal branch or Federal agency.

(2) To *establish* a Federal branch or agency means to:

(i) Open and conduct business through a Federal branch or agency;

(ii) Acquire directly, through merger, consolidation, or similar transaction with another foreign bank, the operations of a Federal branch or agency that is open and conducting business;

(iii) Acquire a Federal branch or agency through the acquisition of a foreign bank subsidiary that will cease to operate in the same corporate form following the acquisition;

(iv) Change the status of an office; or

(v) Relocate a Federal branch or agency within a state or from one state to another.

(d) *Filing requirements*—(1) *General.* Unless otherwise provided in 12 CFR part 28, a Federal branch or agency shall comply with the applicable requirements of this part.

(2) *Applications.* A foreign bank shall submit an application and obtain prior approval from the OCC before it:

(i) Establishes a Federal branch, Federal agency, or limited Federal branch; or

(ii) Exercises fiduciary powers at a Federal branch. A foreign bank may submit an application to exercise fiduciary powers at the time of filing an application for a Federal branch license or at any subsequent date.

EFFECTIVE DATE NOTE: At 68 FR 70698, Dec. 19, 2003, § 5.70 was amended by removing paragraph (c)(1); redesignating paragraphs (c)(2)(i) through (v) as paragraphs (c)(1)(i) through (v); revising newly redesignated

paragraphs (c)(1)(i), (iv), and (v); adding paragraphs (c)(1)(vi) and (c)(2); and revising paragraph (d)(2)(i), effective Jan. 20, 2004. For the convenience of the user, the added and revised text is set forth as follows:

§ 5.70 Federal branches and agencies.

- * * * *
- (c) * * *
- (1) * * *
- (i) Open and conduct business through an initial or additional Federal branch or agency;
- * * * *
- (iv) Convert a state branch or state agency operated by a foreign bank, or a commercial lending company controlled by a foreign bank, into a Federal branch or agency;
- (v) Relocate a Federal branch or agency within a state or from one state to another; or
- (vi) Convert a Federal agency or a limited Federal branch into a Federal branch.
- (2) *Federal branch* includes a limited Federal branch unless otherwise provided.
- (d) * * *

- * * * *
- (2) * * *
- (i) Establishes a Federal branch or agency; or
- * * * *

PART 6—PROMPT CORRECTIVE ACTION

Subpart A—Capital Categories

- Sec.
- 6.1 Authority, purpose, scope, and other supervisory authority.
- 6.2 Definitions.
- 6.3 Notice of capital category.
- 6.4 Capital measures and capital category definitions.
- 6.5 Capital restoration plans.
- 6.6 Mandatory and discretionary supervisory actions under section 38.

Subpart B—Directives To Take Prompt Corrective Action

- 6.20 Scope.
- 6.21 Notice of intent to issue a directive.
- 6.22 Response to notice.
- 6.23 Decision and issuance of a prompt corrective action directive.
- 6.24 Request for modification or rescission of directive.
- 6.25 Enforcement of directive.

AUTHORITY: 12 U.S.C. 93a, 1831o.

SOURCE: 57 FR 44891, Sept. 29, 1992, unless otherwise noted.

Subpart A—Capital Categories

§ 6.1 Authority, purpose, scope, and other supervisory authority.

(a) *Authority.* This part is issued by the Office of the Comptroller of the Currency (OCC) pursuant to section 38 (section 38) of the Federal Deposit Insurance Act (FDI Act) as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102-242, 105 Stat. 2236 (1991)) (12 U.S.C. 1831o).

(b) *Purpose.* Section 38 of the FDI Act establishes a framework of supervisory actions for insured depository institutions that are not adequately capitalized. The principal purpose of this subpart is to define, for insured national banks, the capital measures and capital levels, and for insured federal branches, comparable asset-based measures and levels, that are used for determining the supervisory actions authorized under section 38 of the FDI Act. This part 6 also establishes procedures for submission and review of capital restoration plans and for issuance and review of directives and orders pursuant to section 38.

(c) *Scope.* This subpart implements the provisions of section 38 of the FDI Act as they apply to insured national banks and insured federal branches. Certain of these provisions also apply to officers, directors and employees of these insured institutions. Other provisions apply to any company that controls an insured national bank or insured federal branch and to the affiliates of an insured national bank or insured federal branch.

(d) *Other supervisory authority.* Neither section 38 nor this part in any way limits the authority of the OCC under any other provision of law to take supervisory actions to address unsafe or unsound practices, deficient capital levels, violations of law, unsafe or unsound conditions, or other practices. Action under section 38 of the FDI Act and this part may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the OCC, including